

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)	
)	
CITY OF EL SEGUNDO)	File No. 0001818985
)	
To Operate a Public Safety Radio)	
Communications System in Frequency Band)	
470-512 MHz in El Segundo, California)	

ORDER

Adopted: June 3, 2005

Released: June 7, 2005

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

1. We have before us an application and waiver request filed by the City of El Segundo, California (the City) for authority to operate a public safety radio system in the Los Angeles metropolitan area on four frequencies designated for non-public safety use.¹ National Science and Technology Network, Inc. (NSTN) submitted an informal petition to dismiss or deny the City's application.² As set forth below, we conclude, based on the record before us, that NSTN has not demonstrated that a grant of the City's application and waiver request would be contrary to the public interest, but the City has affirmatively demonstrated that a waiver is appropriate in this instance. Consequently, we deny the informal petition, grant the City's waiver request, and will process the application.

2. *Background.* Section 90.311(a)(2) of the Commission's Rules provides that once a particular channel in the 470-512 MHz band is assigned, subsequent authorizations to use that channel will be granted within the same urbanized area only to the same category of users.³ On May 6, 2004, the City consummated the assignment of two licenses from the Los Angeles County Metropolitan Transportation Administration (LACMTA).⁴ The licenses authorize the City to use frequency pairs 471/474.3375 MHz and 472/475.5375 MHz ("the channels" or "the frequencies") at various locations in Los Angeles County.⁵ The frequencies were assigned to LACMTA as Industrial/Business Pool frequencies, but the City is eligible in the Public Safety Pool.⁶

3. In the instant application, filed July 26, 2004, the City seeks authorization to use the frequencies with a 12.5 kHz bandwidth at two new sites, both in El Segundo. The additional sites and frequencies will allow the City to implement improved and interoperable communications by upgrading

¹ See FCC File No. 0001818985 (filed July 26, 2004), as amended Aug. 12, 2005 (Revised Request), Oct. 18, 2004, and Oct. 26, 2004.

² Letter from Ted S. Henry, President, National Science and Technology Network, Inc. to Mr. Tracy Simmons, Federal Communications Commission (dated Oct. 5, 2004) (Informal Petition).

³ See 47 C.F.R. § 90.311(a)(2).

⁴ See FCC File Nos. 0001727015, 1727023 (filed May 6, 2004) (consummation notifications); see also FCC File Nos. 0001613534, 0001613590 (filed Feb. 19, 2004) (assignment applications).

⁵ See licenses for Stations WQAD318 and WIK593.

⁶ See 47 C.F.R. § 90.20(a)(1).

its existing public safety system.⁷ The requested channels will also allow the City to communicate with surrounding communities' public safety agencies.⁸ A waiver of Section 90.311(a)(2) is required because, under a strict reading of the rule, the channels originally licensed in the Industrial/Business Pool could not be used by the City -- a Public Safety Pool eligible -- even though the City is the only co-channel licensee in the Los Angeles area.⁹

4. NSTN is the licensee of Station WPMP967, which operates at various locations in Los Angeles County on frequency pairs 471/474.3250, 471/474.3500, and 472/475.5250 MHz with a 12.5 kHz bandwidth. On October 5, 2004, NSTN submitted its informal petition to dismiss or deny the City's application. NSTN asserts that the City's proposed operations would cause harmful interference to NSTN's operations.¹⁰ On October 18, 2004, the City amended its application to correct a typographical error in the frequency list.¹¹ On October 19, 2004, the City filed an opposition to NSTN's informal petition.¹² On October 26, 2004, NSTN filed a reply.¹³

5. *Discussion.* We will first address NSTN's informal petition to deny the City's application. NSTN states that an unmodulated carrier frequency will cause harmful interference to an adjacent channel receiver in the "near field" of the transmitter.¹⁴ NSTN states that it has no objection to the City continuing to use its already licensed mountain-top sites, because NSTN's mobile units are not usually operated in the "near field" of those antennas.¹⁵ However, NSTN states that its mobile units will operate in the immediate vicinity of the City's proposed new base stations.¹⁶ As the City points out, however, the Commission's rules governing the 470-512 MHz band consider adjacent channel interference only when there is spectral overlap between existing and proposed users.¹⁷ In this case, there is no spectral overlap, because both the City's proposed system and NSTN's system use a 12.5 kHz bandwidth, and the frequencies are separated by 12.5 kHz. The Commission and the frequency advisory committees have not established procedures in the 470-512 MHz band to analyze potential interference between non-overlapping adjacent channel systems because the potential for interference is minimized when there is no spectral overlap.¹⁸ Consequently, we agree with the City¹⁹ that denying its application

⁷ See Revised Request at 1.

⁸ *Id.*

⁹ Initially, the City obtained a letter of concurrence from LACMTA, which had an application for the same channels pending at the time of the City's initial filing. See letter dated July 8, 2004 from Robert Fischer, Telecommunications Systems Integration Manager, LACMTA, to Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, Federal Communications Commission. LACMTA's application, FCC File No. 0001630120, was dismissed on September 27, 2004. Therefore, the concurrence from LACMTA is moot.

¹⁰ See Informal Petition at 1.

¹¹ Specifically, the City corrected a frequency at one location from 472.5275 MHz to 472.5375 MHz. NSTN had noted that frequency 472.5275 MHz overlapped its 472.5250 MHz. See *id.*

¹² Opposition to Informal Petition to Dismiss or Deny (filed Oct. 19, 2004) (Opposition).

¹³ Letter dated Oct. 26, 2004 from Ted S. Henry, President, National Science and Technology Network, Inc. to Mr. Tracy Simmons, Federal Communications Commission (Reply).

¹⁴ See Informal Petition at 1.

¹⁵ See Reply at 1.

¹⁶ See Informal Petition at 1.

¹⁷ See Opposition at 4.

¹⁸ See *id.* at 5. The City refers to the procedures developed by TIA Working Group 8.8. See Telecommunications Industry Association/Electronics Industry Association Telecommunications Systems Bulletin 88 (TIA/EIA TSB-88), *Wireline Communications System - Performance in Noise and Interference-Limited Situations - Recommended Methods for Technology-Independent Modeling, Simulation, and Verification* (January 1998).

due to NSTN's interference concerns would be unwarranted,²⁰ particularly in light of the fact that NSTN did not provide an engineering analysis to support its allegations of interference. Consequently, we deny the informal petition.

6. Next, we address the City's waiver request. Section 1.925 of the Commission's Rules provides that a waiver may be granted if it is shown that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or, in view of the unique or unusual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²¹ For the reasons stated below, we conclude that grant of the requested waiver is warranted, and the application should be granted.

7. Under the first prong of the waiver standard, the City submits that Section 90.311(a)(2) of the Commission's Rules is intended to ensure that entities sharing channels in the 470-512 MHz band are engaged in compatible operations, so as to limit the possibility of co-channel interference.²² The City also states that the rule is intended to avoid, among other things, public safety entities being required to share channels in the same geographic area with entities eligible in the Industrial/Business Pool and vice versa.²³ We agree with the City that applying the rule under the present circumstances would not serve the underlying purpose of the rule, because the only co-channel licensee on the requested frequencies is the City, which does not require interference protection from itself.²⁴ We also agree with the City that a grant of its waiver request would be in the public interest because the channels will allow the City to meet its critical needs in El Segundo and improve interoperable public safety radio communications between El Segundo and neighboring communities.²⁵ We therefore conclude that grant of the requested waiver is warranted.

8. *Conclusion.* Based on the record before us, we find that NSTN has not made an adequate showing that a grant of the City's application would be inconsistent with the public interest, convenience, or necessity. Accordingly, we deny the informal petition. We further find that the City has satisfied the requirements to obtain a waiver of Section 90.311(a)(2) of our Rules. We therefore grant the City's request for waiver.

9. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, the informal petition submitted by National Science and Technology Network,

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¹⁹ See Opposition at 5-6.

²⁰ With respect to NSTN's argument that the City will cause interference comparable to that between 800 MHz cellular transmitters and adjacent channel public safety radios, we note that the definition of "unacceptable interference" to non-cellular systems that the Commission adopted in the 800 MHz proceeding applies only to that proceeding. See Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969, 15023-24 ¶¶ 90-92 (2004). Thus, we need not resolve the disagreement between the parties on whether the present matter is distinguishable from the 800 MHz proceeding on the grounds that the City does not use Motorola's iDEN technology. See Informal Petition at 1; Opposition at 4; Reply at 1.

²¹ 47 C.F.R. § 1.925.

²² See Revised Request at 2.

²³ See *id.*

²⁴ See *id.*

²⁵ See *id.* at 1.

Inc. on October 5, 2004 **IS DENIED**.

10. **IT IS FURTHER ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the request for waiver associated with the captioned application filed by the City of El Segundo, California **IS GRANTED**, and application FCC File No. 0001818985 **SHALL BE PROCESSED**, consistent with this *Order* and the Commission's Rules.

11. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau